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No. 754

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FILED
MAR 31 1960
JAMES R. BROWNING, Clerk

In the Supreme Court of the United States

OCTOBER TERM, 1959

RUTH JOHNSON WILLIAMS AND FRED COOK, JR.,

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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OPINION BELOW

The opinion of the Court of Appeals (Pet. App. A, 1-36; R. Vol. X, 839-867) is reported at 273 F. 2d 781.

JURISDICTION

The judgment of the Court of Appeals was entered on December 21, 1959 (Pet. App. B, 37; R. Vol. X, 868). A petition for rehearing was denied on February 1, 1960 (R. Vol. X, 869). The petition for a writ of certiorari was filed on March 2, 1969. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether the fact that federal agents had a search warrant, subsequently found deficient, at the time of a joint raid by federal and state officers precluded the trial court from holding that evidence had properly been seized as incident to a lawful arrest.

2. Whether there was probable cause for an arrest without a warrant.

STATEMENT

Following a trial by jury, petitioner Williams was convicted on four counts and petitioner Cook on three counts of an eight-count indictment which charged them with federal narcotics violations (R. Vol. I, 12-17). Petitioner Williams was sentenced as a second offender to concurrent terms of ten years' imprisonment and a total of $5,000 in fines (R. Vol. I, 93, 94). Petitioner Cook was sentenced to concurrent terms of five years (R. Vol. I, 96-97). On appeal, the judgments of conviction were affirmed (R. Vol. X, 868).

The issues raised concern only the validity of the seizure of money and narcotics on February 24, 1958, when state and federal agents went to the premises of petitioner Williams. There was a motion to suppress before trial which was denied (R. Vol. II, 119). The motion was renewed during trial and denied on the basis of the prior ruling (R. Vol. V, 235; Vol. VI, 243).

The federal agents had a search warrant. In the warrant and supporting affidavits (Pet., Appendices C and D), the premises to be searched are described as "5417½ S. Wilton in the Southern District of California," without specifying the city. The war-

rant itself does not state by whom the affidavit was made and does not specify the person to whom it was addressed. The warrant does, however, show that one of the applicants was Malcolm R. Richards "narcotic agent." On the motion to suppress, immediately after defense counsel had referred to deficiencies in the warrant (R. Vol. II, 15-18), the government stated that, though it thought the sufficiency of the warrant could be sustained, the search was in any event valid as incident to a lawful arrest, a matter on which it offered testimony (R. Vol. II, 19-20). The evidence at the hearing may be summarized as follows:

In the latter part of January 1958, an informant, Jesse Thomas, who had given reliable information in the past, told state narcotic officers that petitioner Ruth Williams was selling heroin at 5417½ South Wilton, and that she was a source of supply for Jewel Bryant (R. Vol. II, 38, 41). Deputy Sheriff Burley purchased narcotics from Jewel Bryant during February (R. Vol. II, 35-37).[1] On February 17, Sheriff Gillette saw petitioner Williams and another defendant, Juanita Jackson, drive to the vicinity of Miss Bryant's home and observed Miss Jackson go into Miss Bryant's house. Subsequently, petitioner Williams and Miss Jackson returned to petitioner Williams' home at 5417½ S. Wilton; a little later, Miss Jackson went back to Miss Bryant's home, walked up to the front porch and was seen to contact Miss Bryant (R. Vol. II, 36-37).

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[1] At the trial Deputy Burley testified in detail as to his transactions with Miss Bryant (R. IV, 95-141).

On February 21, Deputy Sheriff Burley and Miss Bryant drove to a place about two blocks from the home of petitioner Williams. Miss Bryant was seen to enter the home of petitioner Williams. Shortly thereafter, she sold narcotics to Deputy Sheriff Burley (R. Vol. II, 36-37).[2]

On February 24, Sheriff Gillette was watching the premises at 5417½ South Wilton and saw petitioner Cook leave the premises twice and return. Cook used the same automobile petitioner Williams had driven on February 18 (R. Vol. II, 23, 36). Later, Deputy Agent Farrington informed Gillette that petitioner Cook had made delivery of narcotics to Miss Bryant, who in turn had delivered the narcotics to Deputy Sheriff Burley (R. Vol. II, 43).[3]

After the sale on February 24 was consummated, the state officers and two federal officers met in front of the premises at 5417½ South Wilton, federal Agent Richards being in possession of the federal warrant. They knocked on the door of petitioner Williams' apartment several times but received no response (R. Vol. II, 23). They tried the door, which opened, and walked in. They saw petitioner Williams standing in the doorway of her bedroom. Gillette immediately told her that she was under arrest for federal narcotics violations and that anything she might say could be used against her (R. Vol. II, 23-24, 25). Federal

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[2] For testimony at the trial, see R. Vol. IV, 95-141; R. Vol. V, 196-200.

[3] The occurrences on February 24, were developed in greater detail at the trial (R. Vol. IV, 136-142; R. Vol. V, 205-206, 219-230; R. Vol. VII, 493-505).

Agent Richards came in the room a little later and showed her the search warrant (R. Vol. II, 30). Richards and Gillette examined money which petitioner had and found some marked bills (R. Vol. II, 32).[4] The agents searched the premises (R. Vol. II, 33). In the yard, they found a garbage can containing heroin (R. Vol. II, 61-63).[5] Petitioner Williams and petitioner Cook, who was arrested in the playroom of the house (see R. Vol. VI, 385), were taken to the Federal Building (R. Vol. VI, 308-309).[6]

The District Court, in denying the motion to suppress, held that the search warrant was invalid, but that the arrest was lawful as based on probable cause, and that the search and seizure were proper as incident to a prior valid arrest (R. Vol. II, 117-119).

ARGUMENT

1. Petitioner argues that since the federal officer had a search warrant, which he showed to petitioner Williams and to which he made a return, the courts below were not justified in upholding the search as incident

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[4] The agents had previously treated the bills with fluorescent powder. Using ultraviolet light, the officers found that the money, the coffee table, the telephone, the clasp on petitioner Williams' purse, her fingerprints, petitioner Cook's fingertips and the inside of his coat pocket were fluorescent (R. Vol. VI, 373, 375, 386).

[5] In a can labeled 5417½, the agents found two small cans, each of which was sealed with scotch tape and contained stapled manila envelopes, which in turn contained heroin. In the house, the officers found scotch tape, a stapling machine, milk sugar, contraceptives and a box containing empty gelatin capsules (R. Vol. VI, 379, 380, 422).

[6] At the trial, it was shown that the group arrived at the federal building at about 6 o'clock (R. Vol. VII, 648). Since the commissioner had left, petitioners were kept in the county jail. A complaint was filed the next day (R. Vol. VIII, 652-654).

to the arrest. Assuming *arguendo* that the search warrant was invalid,[1] the ruling of the courts below was correct. Possession of an insufficient warrant does not render illegal an arrest which could lawfully be made without it. *United States* v. *Rabinowitz*, 339 U.S. 56, 66; *Go-Bart Importing Co.* v. *United States*, 282 U.S. 344, 356; *Stallings* v. *Splain*, 253 U.S. 339, 342. *Giordenello* v. *United States*, 357 U.S. 480, does not, as petitioner suggests (Pet. 20-21), require a different ruling. In *Giordenello*, the government did not attempt to sustain the validity of the arrest and incidental search without a warrant until the case was before this Court. The Court ruled that to "permit the Government to inject its new theory into the case at this stage would unfairly deprive the petitioner of an adequate opportunity to respond" by introducing rebutting evidence. 357 U.S. at 488. In the instant case, the evidence as to the arrest without warrant was developed before the District Court, and petitioners took the stand at the hearing on the motion to suppress in an endeavor to rebut the testimony.

Petitioners also misread the decision in *Baysden* v. *United States*, 271 F. 2d 325 (C.A. 4), when they claim

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[1] It is debatable whether the deficiencies in the warrant were enough to invalidate it. While the city was not specified in the address, the specific street was undoubtedly meaningful to the commissioner, the agents, and the defendant, all in Los Angeles. And while the warrant is not in terms addressed to a civil officer of the United States as required by Rule 41(c), F. R. Crim. P., the warrant shows on its face that one of the applicants was a narcotic agent. The facts set forth in the affidavits, that Jewel Bryant delivered narcotics to Mr. Burley pursuant to prior arrangements almost immediately after she was seen to enter and leave the premises at 5417½ S. Wilton, showed probable cause to believe that heroin was kept at the premises.

that it is in conflict with the decision below (Pet. 10-14). There, the defendant was not arrested before the search occurred, but after the search had been completed (see 271 F. 2d at p. 327).[8] Here, the District Judge specifically found, on the basis of the explicit testimony of three officers, that the arrest was made immediately upon entry and that it preceded the search. The federal officer testified that all of the officers intended to arrest when they entered (R. Vol. V, 318). In his oral remarks, the judge stated (R. Vol. VI, 365-366):

> Fortunate for the officers they made an arrest immediately upon entering the premises and without relying upon anything that happened after they arrived there or after their entry there to justify the arrest.
>
> The arrest is to be justified, if at all, by information in possession of the officers at the time they opened the door and entered the premises. Anything they learned after they walked in that door, or anything they learned after they opened that door, would not serve to validate the arrest.

As the court held further, the officers had probable cause to arrest before they entered.

2. Petitioners are in error in their contention that the arrest was invalid because there was time to get a warrant (Pet. 19-22). Under state (Cal. Pen. Code, Sec. 836) and federal law, the officers were empowered to arrest without a warrant on reasonable cause to be-

[8] Petitioner's citation of *Jones* v. *United States*, 357 U.S. 493, is inapposite. There, this Court found that the purpose of the entry was to search, and not to arrest.

lieve that petitioners had committed an offense. The enactment of 26 U.S.C. 7607 in the Narcotics Control Act of 1956 was designed to give federal narcotics agents authority to arrest without a warrant on probable cause. And it has been held that under this statute the power to arrest without a warrant on probable cause exists even though the officers had time to get a warrant. *Dailey* v. *United States*, 261 F. 2d 870 (C.A. 5), certiorari denied, 359 U.S. 969.

CONCLUSION

It is respectfully submitted that the petition for a writ of certiorari should be denied.

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MARCH 1960.

☆ U. S. GOVERNMENT PRINTING OFFICE 1960 944708 1240